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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/558,924	04/26/2000	John Albert Kembel	10351-0005	1659

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3300 Hillview Avenue  
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EXAMINER

AVELLINO, JOSEPH E

ART UNIT	PAPER NUMBER
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2143

DATE MAILED: 09/05/2003

8

Please find below and/or attached an Office communication concerning this application or proceeding.

**Office Action Summary**

Application No.

09/558,924

Applicant(s)

KEMBEL ET AL.

Examiner

Joseph E. Avellino

Art Unit

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 26 April 2000.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1-20 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-20 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☒ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on \_\_\_\_\_ is: a) ☐ approved b) ☐ disapproved by the Examiner.
- If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

**Priority under 35 U.S.C. §§ 119 and 120**

- 13) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).
- a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

**Attachment(s)**

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☒ Information Disclosure Statement(s) (PTO-1449) Paper No(s) 3, 5.
- 4) ☐ Interview Summary (PTO-413) Paper No(s). \_\_\_\_\_.
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: \_\_\_\_\_.

**DETAILED ACTION**

1. Claims 1-20 are presented for examination.

***Specification***

2. A substitute specification including the claims is required pursuant to 37 CFR 1.125(a) because the specification does not conform to 37 CFR 1.52(1)(ii) which states the top margin of the specification must be at least two (2) inches. A substitute specification in conformance with at least a top margin of two (2) inches is necessary for this case to go to allowance.

A substitute specification filed under 37 CFR 1.125(a) must only contain subject matter from the original specification and any previously entered amendment under 37 CFR 1.121. If the substitute specification contains additional subject matter not of record, the substitute specification must be filed under 37 CFR 1.125(b) and must be accompanied by: 1) a statement that the substitute specification contains no new matter; and 2) a marked-up copy showing the amendments to be made via the substitute specification relative to the specification at the time the substitute specification is filed.

***Claim Rejections - 35 USC § 103***

3. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the

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invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

4. This application currently names joint inventors. In considering patentability of the claims under 35 U.S.C. 103(a), the examiner presumes that the subject matter of the various claims was commonly owned at the time any inventions covered therein were made absent any evidence to the contrary. Applicant is advised of the obligation under 37 CFR 1.56 to point out the inventor and invention dates of each claim that was not commonly owned at the time a later invention was made in order for the examiner to consider the applicability of 35 U.S.C. 103(c) and potential 35 U.S.C. 102(e), (f) or (g) prior art under 35 U.S.C. 103(a).

5. Claims 1-7, and 10-20 are rejected under 35 U.S.C. 103(a) as being unpatentable over Reilly et al. (USPN 5,740,549) (cited by applicant in IDS) (hereinafter Reilly).

6. Referring to claim 1, Reilly discloses a method of tracking distributed content within a computer network, said method comprising the steps of:

identifying the delivery of a set of Network Information Monitors (NIMs) (categories) (e.g. abstract);

tracking information about each NIM within said set of NIMs, said information including:

an identifier for said selected NIM (col. 7, lines 45-67); and

determining from said information sub-sets of NIMs that are displayed simultaneously (col. 7, line 65 to col. 8, line 4).

Although Reilly does not specifically disclose that tracking information is collected when the user opens and closes a selected NIM, Reilly does state that profile data including "viewing preferences" (abstract) is collected. This would lead one of ordinary skill in the art to determine that tracking times that a user is using the system can be collected and used for statistical purposes, therefore it would have been obvious to one of ordinary skill in the art at the time the invention was made to provide for tracking the usage of the program for enhanced statistical purposes and marketing strategies.

7. Referring to claim 2, Reilly discloses tracking information is selected from the group comprising a home NIM download event, a NIM download event, a NIM display event, a browser click-through event, and a page-view event (col. 7, line 21 to col. 8, line 18). The Office takes "tracking information" to mean any data collection or event which will cause an update of a profile.

8. Referring to claim 3, Reilly discloses tracking information is selected from the group comprising a NIM installation event (selecting more (sub)categories to monitor), a home NIM startup event, a transient mode event, a shared NIM received event, and a shared NIM pack received event (col. 9, lines 35-63; col. 12, lines 25-45).

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9. Referring to claim 4, Reilly discloses constructing a statistical database to track individual events executed by a plurality of users that receive NIMs (Figure 4 and pertinent portions of the disclosure).

10. Referring to claim 5, Reilly discloses constructing a content database to characterize the content associated with a set of NIMs (Figure 8; col. 11, line 64 to col. 12, line 19).

11. Referring to claim 6, Reilly discloses using subsets of NIMs to create packs of NIMs (col. 9, lines 59-62).

12. Referring to claim 7, Reilly discloses targeting an advertisement to a single user based upon said subsets of NIMs (Figures 8-9; col. 12, line 6-56).

13. Claims 10-20 are rejected for similar reasons as stated above.

Claims 8, and 9 are rejected under 35 U.S.C. 103(a) as being unpatentable over Reilly in view of Hunt et al. (USPN 5,893,091) (cited by applicant in IDS) (hereinafter Hunt).

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14. Referring to claim 8, Reilly discloses a method of tracking distributed content as stated in the claims above. Reilly does not specifically disclose dynamically determining in real-time subsets of NIMs that are displayed simultaneously, however Hunt discloses dynamically determining in real-time subsets of NIMs that are displayed simultaneously (col. 4, line 56 to col. 5, line 4; col. 11, lines 25-35). It would be obvious to a person of ordinary skill in the art at the time the invention was made to combine the teaching of Hunt with Reilly to reduce network congestion by using Multicast IP addressing to update news databases on client machines.

15. Referring to claim 9, Reilly discloses a method of tracking distributed content as stated in the claims above. Reilly does not specifically disclose determining sub-sets of NIMs that are delivered to a single user, however Hunt discloses determining sub-sets of NIMs that are delivered to a single user (col. 4, line 56 to col. 5, line 4). It would be obvious to a person of ordinary skill in the art at the time the invention was made to combine the teaching of Hunt with Reilly to reduce network congestion by using Multicast IP addressing to update news databases on client machines.

### ***Conclusion***

16. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.

17. Ogasawara (USPN 6,065,044) discloses home page update notification apparatus comparing notification time and update time to determine home page update status.
18. Kuo et al. (USPN 6,418,440) discloses performing automated dynamic dialogue generation.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Joseph E. Avellino whose telephone number is (703) 305-7855. The examiner can normally be reached on Monday-Friday 7:00-4:00.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, David A. Wiley can be reached on (703) 308-5221. The fax phone numbers for the organization where this application or proceeding is assigned are (703) 746-7239 for regular communications and (703) 746-7238 for After Final communications.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is (703) 305-3900.

JEA  
August 25, 2003

  
DAVID WILEY  
SUPERVISORY PATENT EXAMINER  
TECHNOLOGY CENTER 2100